



# CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: Power Supply Contract between Cherry Products, Inc., and the City of Lodi  
MEETING DATE: June 19, 1996  
SUBMITTED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt the attached resolution authorizing the Electric Utility Director to approve the Economic Development Power Supply Contract (Contract) between Cherry Products, Inc. (Customer) and the City of Lodi (City).

BACKGROUND: In return for the customer's: 1) providing new employment; and 2) improving the City's industrial area and moving into a manufacturing facility which is currently under-utilized, the Electric Utility Department recommends a ten percent (10%) discount on the published applicable Electric Rate Schedules (G1 and G2) for the term of the contract. Should customer subsequently increase operation requiring Time-of-Use Rate Schedules, the contract will be revised accordingly. Power costs will be covered and other ratepayers will receive a contribution to the margin for electric system costs.

The contract term will be from the document signing date by both parties until December 31, 2001. The contract term and other elements were chosen to provide rate stability and balanced economic risk for both parties.

FUNDING: Not Applicable

Alan N. Vallow  
Electric Utility Director

Prepared by John Stone, Manager, Rates and Resources

Attachment

ANV/JLS/pn

cc: City Attorney

APPROVED

H. Dixon Flynn  
CITY MANAGER

**RATE AGREEMENT**  
**BETWEEN**  
**CHERRY PRODUCTS, INC.**  
**AND**  
**THE CITY OF LODI**

This Agreement is made by and between CHERRY PRODUCTS, INC. ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory Rate Schedule assignment for this Customer.

**WITNESSETH:**

**WHEREAS,** City operates an electric utility system supplying electric power to City customers; and

**WHEREAS,** Customer is a manufacturer of food plastic products which will be operating in the City;  
and

**WHEREAS,** Customer is moving into an under-utilized, existing facility; and

**WHEREAS,** Customer is bringing new employment to the City; and

**WHEREAS,** City desires to supply the Customer's total load and provide Customer with a contract  
rate; and

**WHEREAS,** City desires to provide the Customer an economic incentive in the form of a discounted  
electric rate in return for creating a new business with new electric load in the City.

**NOW, THEREFORE,** the Parties hereto agree as follows:

Section 1. Definitions. Whenever used in this Agreement, in either the singular or plural number, the  
following terms shall have the following respective meanings:

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is Cherry Products, Inc.

- 1.4 "Facility" is the Customer's facility located at 1122 Industrial Way, Lodi, California.
- 1.5 "Account" is the Customer's Account Number initially assigned to Customer's Facility or its successor Customer Account Number(s).
- 1.6 "Parties" are collectively Customer and City.
- 1.7 "kw" is a kilowatt, a demand charge billing unit.
- 1.8 "kwh" is a kilowatt-hour, an energy charge billing unit.
- 1.9 "billing cycle" is the monthly bill.
- 1.10 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.

Section 2. Rate Application.

- 2.1 The customer charge assessed will be in accordance with the applicable Electric Rate Schedule.
- 2.2 A ten percent (10%) discount to the published applicable Electric Rate Schedules (G1 or G2) demand and energy charges will be given.

Section 3. Term of Agreement.

- 3.1 This Agreement shall be binding for bills rendered on or after July 1, 1996 and shall remain in effect subject to Paragraphs 3.2 and 3.3 below, for bills rendered through December 31, 2001.
- 3.2 If either party fails to perform any of the provisions of this Agreement, the other party

may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.

3.3 This Agreement cannot be terminated without mutual consent of the Parties.

3.4 Parties may mutually extend this Agreement from year to year beyond the original term of this Agreement.

#### Section 4. Force Majeure.

4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence. The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.

4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.

4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This sub-paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

#### Section 5. Assignments.

5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. Amendments.

6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. Severability.

7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. Governing Law.

8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. Counterparts.

9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. Headings.

10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. Notices.

11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the

same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

11.2 All written notices or questions shall be directed as follows:

To City: ELECTRIC UTILITY DIRECTOR  
CITY OF LODI

1331 SOUTH HAM LANE

LODI CA 95242-3995

To Customer: CHERRY PRODUCTS, INC

1122 INDUSTRIAL WAY

LODI CA

Section 12. Non-waiver.

12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. Warranty of Authority.

13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI

By \_\_\_\_\_ (Date) \_\_\_\_\_  
Alan N. Vallow  
Electric Utility Director

Approved as to form

Attest: \_\_\_\_\_  
City Clerk  
Jennifer M. Perrin

By *Randall A. Hays*  
Randall A. Hays  
City Attorney

CHERRY PRODUCTS, INC.

By \_\_\_\_\_ (Date) \_\_\_\_\_

RESOLUTION NO. 96-83

A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING THE ELECTRIC UTILITY DIRECTOR TO APPROVE  
ECONOMIC DEVELOPMENT POWER SUPPLY CONTRACT  
WITH CHERRY PRODUCTS, INC.

=====

BE IT RESOLVED, that the Lodi City Council hereby authorizes the Electric Utility Director to approve an Economic Development Power Supply Contract with Cherry Products, Inc.; and

FURTHER RESOLVED, that the Electric Utility Director and City Clerk are hereby authorized to execute said Contract on behalf of the City.

Dated: June 19, 1996

=====

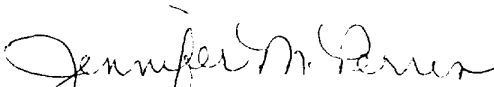
I hereby certify that Resolution No. 96-83 was passed and adopted by the Lodi City Council in a regular meeting held June 19, 1996 by the following vote:

AYES: Council Members - Davenport, Mann, Pennino, Sieglock  
and Warner (Mayor)

NOES: Council Members - None

ABSENT: Council Members - None

ABSTAIN: Council Members - None

  
JENNIFER M. PERRIN  
City Clerk